

In the Court of Appeals of the State of Alaska

Loren Larson Jr.,
Appellant,

v.

**Superior Court, Fourth Judicial
District,**

Appellee.

Court of Appeals No. **A-13449**

Order

Date of Order: **7/7/2020**

Trial Court Case No. **4FA-18-02677CI**

Loren Larson Jr. represents himself in this case. The briefing is complete, and the case is scheduled for oral argument on July 15, 2020.

Upon reviewing the briefs, the Court discovered that Mr. Larson has raised an issue in his reply brief that was not raised in his opening brief. In his reply, Mr. Larson alleges that he was denied the assistance of counsel when he litigated his 2010 Rule 60(b) motion, in which he was seeking relief from the judgment dismissing his first application for post-conviction relief.

As a general matter, an appellant is not allowed to raise new claims in their reply brief; therefore, “if a litigant raises a claim for the first time in their reply brief, that claim is deemed waived or forfeited (even if the claim was litigated in the lower court).” *Berezyuk v. State*, 282 P.3d 386, 398 (Alaska App. 2012).

However, it is at least arguable that Larson’s belated claim implicates whether the superior court order dismissing his 2010 motion was void because Larson was deprived of the assistance of counsel. Civil Rule 60(b)(4) provides relief from a

void judgment, and there are no time limits for challenging a void judgment.

This Court recognized in *Flanigan v. State*, 3 P.3d 372, 376 (Alaska App. 2000), that when a defendant is completely deprived of the right to counsel, it is equivalent to a lack of jurisdiction. *See Johnson v. Zerbst*, 304 U.S. 458, 467-68, 58 S.Ct. 1019, 1024-25 (1938) (holding that when a defendant is denied the right to counsel, this denial of counsel deprives the court of jurisdiction and renders void any ensuing judgment issued by the court). In *Brockway v. State*, 37 P.3d 427, 430 (Alaska App. 2001), this Court explained that a defendant is completely denied the right to counsel if the defendant requests counsel and is denied counsel or if the defendant proceeds without counsel and the trial judge did not obtain a knowing waiver of the right to counsel.

Procedurally, because Mr. Larson did not raise this claim until he filed his reply brief, the State's attorney, Anna Jay, did not have an opportunity to respond to it. That said, Ms. Jay is directed to be prepared to address Mr. Larson's claim at oral argument on July 15, 2020.

Entered under the authority of Chief Judge Allard.

Clerk of the Appellate Courts

A handwritten signature in cursive script that reads "Joyce Marsh". The signature is written in black ink and is positioned above a horizontal line.

Joyce Marsh, Deputy Clerk

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cc: Court of Appeals Judges
Central Staff Attorney

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